



January 7, 2013

BY CM/ECF

Catherine O'Hagan Wolfe, Clerk of the Court
 U.S. Court of Appeals for the Second Circuit
 Thurgood Marshall U.S. Courthouse
 40 Foley Square
 New York, NY 10007

**Re: *Pedersen, et al. v. Office of Personnel Management, et al.*,
 Nos. 12-3273 & 12-3872 (2d Cir.)**

Dear Ms. O'Hagan Wolfe:

I write on behalf of Appellant the Bipartisan Legal Advisory Group of the U.S. House of Representatives (“House”) to advise the Court that, in light of (i) this Court’s Order of November 28, 2012; (ii) a pending motion to stay filed by the Department of Justice (“Department”) on behalf of the Executive Branch defendants, which is unopposed; and (iii) the Supreme Court’s grant of certiorari in *United States v. Windsor*, No. 12-307 (Dec. 7, 2012) (a case which raises the same constitutional issue as the two *Pedersen* appeals), the House proposes not to file a brief in No. 12-3872 on January 10, 2013, unless directed otherwise by the Court.

By way of background, on August 21, 2012, the Executive Branch defendants appealed the lower court ruling in *Pedersen v. Office of Pers. Mgmt.*, No. 3:10-cv-1750, – F. Supp. 2d –, 2012 WL 3113883 (D. Conn. July 31, 2012). *See* Notice of Civil Appeal, No. 12-3273 (Aug. 21, 2012) (ECF No. 1).¹ That appeal was docketed as No. 12-3273. The Department sought, and was granted, leave to file its opening brief in No. 12-3273 on November 27, 2012. *See* Order (Sept. 17, 2012) (ECF No. 48). Subsequently, on September 26, 2012, the House also appealed the lower court’s ruling in *Pedersen*. *See* Notice of Civil Appeal, No. 12-3872 (Sept. 28, 2012) (ECF No. 53). The House sought, and was granted, leave to file its opening brief in No. 12-3872 on January 10, 2013. *See* Letter from Paul D. Clement, to Catherine O'Hagan Wolfe, Clerk of the Court (Oct. 17, 2012) (ECF No. 94); Order (Nov. 16, 2012) (ECF No. 108). The two appeals have not been formally consolidated.

On November 16, 2012, the Department moved to stay briefing in both appeals. *See* [Dep’t]’s Mem. in Supp. of Mot. to Hold Appeals in Abeyance Pending S. Ct. Review (Nov. 16, 2012) (ECF No. 109). On November 28, 2012, one day after the Department’s opening brief was due (but was not filed) in No. 12-3272, the Court directed that:

¹ All ECF numbers referenced herein refer to the docket numbers assigned in No. 12-3273.

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If certiorari is denied, movants may file their brief no later than 14 days after the denial, no further extensions. If certiorari is granted, the parties shall consult with staff attorneys as to whether an agreement to hold the case in abeyance can be reached. If an agreement cannot be reached, a motion to hold the cases in abeyance shall be referred to the court.

Order (Nov. 28, 2012) (ECF No. 114) ("November 28 Order").

On December 7, 2012, the Supreme Court granted certiorari in *United States v. Windsor*, No. 12-307. *See Order Granting Cert., United States v. Windsor*, No. 12-307, – S. Ct. –, 2012 WL 4009654 (Dec. 7, 2012). Two petitions for certiorari before judgment filed by the Department and the Plaintiffs-Appellees in this case remain pending before the Supreme Court. *See S. Ct. Docket, Pedersen, et al. v. Office of Pers. Mgmt. et al.*, No. 12-231, available at <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-231.htm> (no action taken since petition distributed for conference on December 7, 2012); *S. Ct. Docket, Office of Pers. Mgmt. et al. v. Pedersen et al.*, No. 12-302, available at <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/12-302.htm> (same).

Because the merits question presented to the Supreme Court in *Windsor* is identical to the issue presented in the two *Pedersen* appeals, the Department – with the concurrence of the House and the Plaintiffs-Appellees, and in accordance with this Court's November 28 Order – moved to stay both *Pedersen* appeals pending the Supreme Court's ruling in *Windsor*. *See Consent Mot. to Hold Appeals in Abeyance Pending Supreme Court Review* (Dec. 19, 2012) (ECF No. 115). The Department's motion is pending at this time.

Under these circumstances, and given that counsel for the House is currently consumed with drafting a merits brief in *Windsor* which is due to be filed with the Supreme Court on January 22, 2013, *see Order in Pending Case, United States v. Windsor*, No. 12-307 (Dec. 14, 2012), available at http://www.supremecourt.gov/orders/courtorders/121412zr_ap6c.pdf, the House proposes not to file a brief in No. 12-3872 on January 10, 2013, unless directed otherwise by the Court.

Thank you for your attention.

Respectfully submitted,

/s/ Paul D. Clement
Paul D. Clement
Counsel for the Bipartisan Legal Advisory Group of the U.S. House of Representatives